

APPEAL NO. 041072
FILED JULY 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 13, 2004. The hearing officer decided that the respondent's (claimant herein) compensable injury of _____, includes an injury to the low back and that the claimant had disability beginning on October 18, 2003, and continuing through the date of the CCH. The appellant (carrier herein) files a request for review in which it argues that the hearing officer's resolution of the extent and disability issues are contrary to the evidence and that the hearing officer erred in not reopening the record to allow the carrier to submit further evidence. The claimant responds that the hearing officer did not err in refusing to reopen the record to admit evidence not timely exchanged by the carrier and which the carrier failed to show it had exercised due diligence in obtaining. The claimant also argues that the evidence supported the hearing officer's resolution of the extent-of-injury and disability issues.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We first address the carrier's evidentiary point. The carrier argues that the hearing officer erred in failing to reopen the record to admit additional evidence concerning a prior injury. The attorney for the carrier argues that this evidence was obtained the night prior to the CCH and that the carrier's attorney did not have time to review this evidence prior to the CCH. We note that the hearing officer permitted the carrier to admit into evidence the one exhibit from this evidence offered by the carrier. We also note that the carrier did not request a continuance to permit it to further examine the evidence and that the evidence was not timely exchanged with the claimant. Under these circumstances, we perceive no reversible error in the hearing officer's refusing to reopen the record to admit further evidence.

The issues of extent of injury and disability are questions of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the

credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge